



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/067, 797 05/27/93 JOHNSON

E A6274

EXAMINER

LILLING, H

18N2/0913
SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, DC 20037-3202

ART UNIT	PAPER NUMBER
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HJ

1808

DATE MAILED:

09/13/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire THREE month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6. _____

Part II SUMMARY OF ACTION

1. Claims 28 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. Claims 1-27 have been cancelled.
3. Claims _____ are allowed.
4. Claims 28 are rejected.
5. Claims _____ are objected to.
6. Claims _____ are subject to restriction or election requirement.
7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. Formal drawings are required in response to this Office action.
9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).
11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).
12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.
13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. Other

See No 08/067797

EXAMINER'S ACTION

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
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DATE MAILED:

NOTICE OF INFORMAL APPLICATION

(Attachment to Office Action)

This application does not conform with the rules governing applications for the reason(s) checked below. The period within which to correct these requirements and avoid abandonment is set in the accompanying Office action.

A. A new oath or declaration, identifying this application by the application number and filing date is required. The oath or declaration does not comply with 37 CFR 1.63 in that it:

1. does not identify the city and state or foreign country of residence of each inventor.
2. does not identify the citizenship of each inventor.
3. does not state whether the inventor is a sole or joint inventor.
4. does not state that the person making the oath or declaration:
 - a. has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.
 - b. believes the named inventor or inventors to be the original and the first inventor or inventors of the subject matter which is claimed and for which a patent is sought.
 - c. acknowledges the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.
5. does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application serial number, country, day, month, and year of its filing.
6. does not state that the person making the oath or declaration acknowledges the duty to disclose information which is material to patentability as defined in 37 CFR 1.56 which became available between the filing date of the prior application and filing date of the continuation-in-part application which discloses and claims subject matter in addition to that disclosed in the prior application (37 CFR 1.63(d)).
7. does not include the date of execution.
8. does not use permanent ink, or its equivalent in quality, as required under 37 CFR 1.52(a).
9. contains non-initialed alterations (See 37 CFR 1.52(c)).

10. Other: FIGURE HAS PAGES NOT NUMBERED

B. Applicant is required to provide:

1. A statement signed by applicant giving his or her complete name. A full name must include at least one given name without abbreviation as required by (37 CFR 1.41(a)).
2. Proof of authority of the legal representative under 37 CFR 1.44.
3. An abstract in compliance with 37 CFR 1.72(b).
4. A statement signed by applicant giving his or her complete post office address (37 CFR 1.33(a)).
5. A copy of the specification written, typed, or printed in permanent ink, or its equivalent in quality as required by 37 CFR 1.52(a).
6. Other:

15. Receipt is acknowledged of the preliminary amendment filed May 27, 1993.

16. Claim 28 is presented for examination. Claims 1-27
5 have been cancelled.

17. Applicant is kindly requested to correct the deficiencies as noted by the draftsmen on the PTO-948 dated August 3, 1993.

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18. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

15 The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

20 The specification is objected to under 35 U.S.C. § 112, first paragraph, as being

i.> Broader than the originally filed application with respect to the "ant-1-4" which is not disclosed.

25 ii.> The specification is objected to under 35 U.S.C. § 112, first paragraph, as being non-enabling to make and practice the instant inventions with respect to the yeast as claimed,

It is apparent that the yeast is required to practice the claimed invention(s) as recited in the claims. As a required

element it must be known and readily available to the public or obtainable by a repeatable method set forth in the specification. If it is not so obtainable or available, the enablement requirements of 35 U.S.C. 112, first paragraph, may be satisfied 5 by deposits of all of the claimed microorganism within the scope of the broad claims . See 37 C. F. R. 1.802.

The specification does not provide a repeatable method for obtaining the yeast and it does not appear to be a readily 10 available material. Deposit of it would satisfy the enablement requirements of 35 U.S.C. 112. If a deposit has been made, Applicant is required to meet the necessary criteria of the deposit rules in accordance with 37 CFR 1.801-37 CFR 1.809.

15 If a deposit has not been supplied or made under the Budapest Treaty, then an affidavit or declaration by Applicants or someone associated with the patent owner who is in a position to make such assurances, or a statement by an attorney of record over his or her signature, stating that the deposit has been made 20 under the terms of the Budapest Treaty and that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent, would satisfy the deposit requirements, See 37 CFR 1.808.

If a deposit is not made under the terms of the Budapest Treaty, then an affidavit or declaration by Applicants or someone associated with the patent owner who is in a position to make such assurances, or a statement by an attorney of record over his 5 or her signature, stating that the deposit has been made at an acceptable depository and that the following criteria have been met:

a) during the pendency of the application, access to the deposit will be afforded to one determined by the 10 Commissioner to be entitled thereto;

b) all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a 15 patent;

c) the deposit will be maintained for a term of at least thirty (30) years and at least five (5) years after the most recent request for the furnishing of a sample of 20 the deposited material;

d) a viability statement in accordance with the provisions of 37 CFR 1.807;

e) the deposit will be replaced should it become necessary due to inviability, contamination or loss of capability to function in the manner described in the specification.

5 In addition, the identifying information set forth in 37 CFR 1.809(d) should be added to the specification. See 37 CFR 1.803-37 CFR 1.809 for additional explanations of these requirements.

10 19. Claim 28 is rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

15 20. 35 U.S.C. § 101 reads as follows:

20 "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

21. Claim 28 is rejected under 35 U.S.C. § 101 because it is within the scope of a product of nature.

25 22. References cited of interest.

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23. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

5
24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner 10 Lilling whose telephone number is (703) 308-2034. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

15

H. J. Lilling: HJL

(703) 308-2034

Art Unit 1808

September 9, 1993

20

Herbert J. Lilling
HERBERT J. LILLING
PATENT EXAMINER
GROUP 180 - ART UNIT 1808